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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,179	09/12/2003	Therese Cetrulo	0876-0203	8282

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EXAMINER

PADEN, CAROLYN A

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 05/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/661,179

Applicant(s)

CETRULO ET AL.

Examiner

Carolyn A. Paden

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 1-30-04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4, 7-8, 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Powers (4,889,739).

Powers discloses commercial feed juices having a more hand-squeezed character. The feed juices are disclosed at column 7; lines 2-19 to have a sinking pulp value of 8% or less. The Brix content of the juice of example 1 is 13.7. At column 43 the concept of adding water to orange juice is shown for orange juice concentrates. Claim 1 appears to differ from Powers in the use of a diluent to lower the Brix level to about 9 degrees Brix. At column 4, line 65 the original sinking pulp values are disclosed to be at least about 10%. Thus for the overall disclosure of Powers, it is obvious that some of the sinking pulp is removed when providing a standard single strength orange juice. Although orange juice is typically not diluted to levels under that found in single strength orange juice, it would have been obvious to dilute it more to extend the orange juice to provide more orange

drink. Because sinking pulp is a very important ingredient in providing "hand-squeezed character" to orange juice, it would have been obvious to fortify the diluted beverage of Powers to provide a better orange juice flavor to the product. The additional orange flavor ingredients are well known additives for orange juice as disclosed in Example 1. It is appreciated that the method by which the sinking pulp is made is not made but process limitations do not carry any weight in product claims. It is also appreciated that a reduction in sugar content is not mentioned but one of ordinary skill in the art would expect the sugar content of orange juice or grapefruit juice to go down when the juice is diluted to a drink. It is appreciated the sensory and texture attributes "comparable to whole citrus juice" is not mentioned but these attributes are uncharacterized and do not alone constitute unobviousness.

Claims 1-4, 7-8 and 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ojima et al (7,029,717) in view of Powers (4,889,739).

Ojima discloses an orange juice drink containing sucralose at example 30. The claims appear to differ from Ojima is the recitation of the Brix level of the diluted juice drink and the extent of sinking

pulp in the juice. Powers teaches orange juice with the claimed sinking pulp level, that has a more hand-squeezed character. The feed juices are disclosed at column 7, lines 2-19 to have a sinking pulp value of 8% or less. The Brix content of the juice of example 1 is 13.7. At column 43 the concept of adding water to orange juice is shown for orange juice concentrates. Thus for the overall disclosure of Ojima, it would have been obvious to use more of the juice of Powers in the beverage of Ojima to provide a lower calorie juice with a hand squeezed flavor. It is appreciated that the reduction of sugar is not mentioned but the extent of sugar reduction would have been dependent upon the starting concentration of the orange juice and the extent of water added to the juice. The preparation method of claim 7 is a process limitation, carrying no weight in product claims.

Claims 1, 3-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kupper (4,690,827) in view of Powers ((\$,889,739).

Kupper discloses fruit juice with artificial sweetener. At column 1, line 15 the extent of dilution of the juice is disclosed. At column 1, lines 49-50 both orange and grapefruit juice is disclosed. The concept of adding juice pulp is discussed at column 2, lines 28-48.

Homogenizing orange juice and pulp together is disclosed at example 1, lines 65-68. The claims appear to differ from Kupper in the recitation of the use of sinking pulp as the selected pulp. Powers teaches that citrus juice has an established brix level and sinking pulp level in single strength citrus juice. It would have been obvious to include the sinking pulp of Powers in the beverage of Kupper to optimize the hand squeezed flavor of the beverage. It is appreciated that fortification with calcium and tocopherol is not mentioned but orange juice and orange drink are excellent vehicles for food fortification. It would have been obvious to supplement the beverage of Kupper with nutrients to enhance the nutritional quality of the beverage. The release of the pectin in claim 13 is a process limitation, carrying no weight in product claims.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kupper in view of Powers as applied to claims 1, 3-8 & 14-20 above, and further in view of Ojima (7,029,717).

The claims appear to differ from Ojima in the recitation of the use of sucralose. It would have been obvious to use sucralose as a well-known artificial sweetener in Kupper.

Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear as to what is meant by DV in claim 11. Clarification is requested.

No claim is allowed.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (571) 272-1398 or by dialing 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


CAROLYN PADEN 5-5-06
PRIMARY EXAMINER 1761